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14 IN THE UNITED STATES BANKRUPTCY COURT  
15 EASTERN DISTRICT OF CALIFORNIA  
16 FRESNO DIVISION

17 In re

18 TULARE LOCAL HEALTHCARE  
19 DISTRICT, dba TULARE  
20 REGIONAL MEDICAL CENTER,

Debtor.

21 Tax ID #: 94-6002897  
22 Address: 869 N. Cherry Street  
23 Tulare, CA 93274

CASE NO. 17-13797

DC No.: ASM-1

Chapter 9

Date: November 30, 2017  
Time: 9:30 a.m.  
Place: 2500 Tulare Street  
Fresno, CA 93721  
Courtroom 13  
Judge: Honorable René Lastreto II

24 **OPPOSITION TO MOTION FOR RELIEF FROM AUTOMATIC STAY**  
25 **(THOMAS J. GRIESBACH, AMY S. FERREIRA, AND MATTHEW J. GRIESBACH)**

26 TO THE HONORABLE RENÉ LASTRETO II, UNITED STATES BANKRUPTCY

27 JUDGE:  
28

1 TULARE REGIONAL HEALTHCARE DISTRICT, dba TULARE REGIONAL  
2 MEDICAL CENTER ("TRMC") respectfully comes before the Court in opposition to the  
3 Motion filed by Thomas J. Griesbach, Amy S. Ferreira, and Matthew J. Griesbach  
4 requesting relief from the automatic stay ("Motion") as follows:

5 I.

6 BACKGROUND

7  
8 1. TRMC filed a voluntary Chapter 9 case on September 30, 2017 (the  
9 "Petition Date").

10 2. TRMC was named as a defendant in the following lawsuit: *Thomas J.*  
11 *Griesbach, et al. v. Tulare Regional Medical Center, et al., Tulare County Superior*  
12 *Court Case No. VCU2700010* (the "Lawsuit"). The Lawsuit was pending as of the  
13 Petition Date.

14 3. By the Lawsuit, Thomas J. Griesbach, Amy S. Ferreira, and Matthew J.  
15 Griesbach (collectively, "Creditor") seek damages from TRMC for the tort of negligence  
16 resulting in wrongful death.

17  
18 4. Creditor now seeks an order from this Court for relief from the automatic  
19 stay so that it can pursue the Lawsuit against TRMC.

20 II.

21 THE STAY APPLIES TO THE LAWSUIT

22 11 U.S.C. § 362 provides for an automatic stay upon the filing of a bankruptcy  
23 petition under any chapter of the Bankruptcy Code. Further, Section 362 provides for a  
24 broad stay of litigation, lien enforcement and other actions, judicial or otherwise, that  
25

26 ///

27 ///

1 are attempts to enforce or collect prepetition claims. 3 *Collier on Bankruptcy* ¶ 362.01  
2 (Alan N. Resnick & Henry J. Sommer eds., 16<sup>th</sup> ed.). Creditor's Lawsuit is an attempt to  
3 determine the underlying liability of TRMC as to a wrongful death tort claim which  
4 arose prior to the filing of the bankruptcy case. The automatic stay applies to the  
5 Lawsuit.

### 6 III.

#### 7 STANDARDS FOR RELIEF FROM STAY

8  
9 11 U.S.C. § 362(d) provides for circumstances under which this Court  
10 may terminate, annul, modify, or condition the automatic stay. 11 U.S.C. § 362(d)(1)  
11 and (2) provide:

12 “(d) On request of a party in interest and after notice and a hearing, the  
13 court shall grant relief from the stay provided under subsection (a) of this  
14 section, such as by terminating, annulling, modifying or conditioning such  
stay -

15 (1) for cause, including the lack of adequate protection of an  
interest in property of such party in interest; or

16 (2) with respect to a stay of an act against property under  
subsection (a) of this section, if -

17 (A) the debtor does not have an equity in such  
property; and

18 (B) such property is not necessary to an effective  
reorganization.”

### 19 IV.

#### 20 THE BURDEN TO SHOW CAUSE IS ON CREDITOR

21 Creditor has the burden to show that cause exists. To obtain relief from the  
22 automatic stay, the movant must first establish a prima facie case that “cause” exists  
23 for the relief under Section 362(d)(1). See *In re Gould*, 401 B.R. 415, 426 (9<sup>th</sup> Cir.  
24 2009). Once a prima facie case has been established, the burden shifts to the debtor  
25 to show that relief from the stay is unwarranted. *Id.*

26 ///

27 ///

28 ///

## V.

## CREDITOR FAILS TO STATE GROUNDS FOR CAUSE

Creditor's Motion fails to state grounds for "cause" for the Court to order relief from the automatic stay. The Bankruptcy Code does not define what constitutes "cause." Rather, "cause is determined on a case-by-case basis." *Christensen v. Tucson Estates, Inc.*, 912 F.2d 1162, 1166 (9<sup>th</sup> Cir. 1990). Although Creditor's Motion correctly cites 11 U.S.C. § 362(d) and states that "cause exists," Creditor offers no facts or law in support thereof.

## VI.

## THE DEBTOR WILL BE PREJUDICE IF THE RELIEF IS GRANTED

In *In re Holtkamp*, 669 F.2d 505 (7<sup>th</sup> Cir. 1982), the Seventh Circuit stated that when evaluating whether cause exists to allow state court litigation to liquidate claims against the debtor it should first consider whether allowing the litigation to proceed will result in "no great prejudice" to the debtor and the estate.

Here, the relief requested is premature and will prejudice the Debtor if granted. As the Court is well aware, TRMC is currently involved in a struggle for control of its own finances with its management company, Healthcare Conglomerate Associates, LLC ("HCCA"). TRMC's struggles with HCCA have been the subject of numerous pleadings filed with this Court and will not be restated here. Further, as of the Petition Date, TRMC had been named in approximately 18 civil lawsuits. If this and other similar lawsuits are allowed to proceed, TRMC will have to contend not just with HCCA at the outset of its Chapter 9 case, but with defending these numerous civil matters.

Moreover, TRMC is a participating member of a risk management joint powers authority ("JPA"). This means that TRMC self-insures its liability claims and losses by pooling risks among similar healthcare facilities. The JPA that TRMC is a member of is called BETA Risk Management Authority ("BETA"). The JPA is subject to a \$100,000 deductible which makes the first \$100,000 of any award or settlement TRMC's responsibility.

1 BETA has indicated that HCCA has not tendered TRMC's monthly contract  
2 payments for September or October and that if payment is not made soon it will seek  
3 termination of TRMC's membership and contribution on any claims such as Creditor's,  
4 leaving no available indemnity.

5 Until the contract with BETA is brought current and assumed there is no  
6 certainty that there will be any source of payment other than TRMC's assets.  
7 Consequently, although TRMC recognizes that courts have held that cause exists to lift  
8 the stay where the debtor-defendant will not be prejudiced because plaintiffs seek only  
9 to recover as to insurance proceeds<sup>1</sup>, this is not the case here for the reasons  
10 mentioned above.

11  
12 **VII.  
CONCLUSION**

13 WHEREFORE, because Creditor has not established a prima facie case that  
14 cause exists for relief to be granted, because TRMC will be prejudiced should relief be  
15 granted, and because should Creditor obtain a judgment there is no certainty of any  
16 source of payment other than TRMC's assets, the Motion should be denied without  
17 prejudice.

18  
19 Dated: November 16, 2017

20 WALTER WILHELM LAW GROUP,  
a Professional Corporation

21  
22  
23 By: 

24 Danielle J. Bethel  
25 Attorneys for the Debtor  
26 Tulare Local Healthcare District, dba  
27 Tulare Regional Medical Center

28 <sup>1</sup>In re Fernstrom Storage and Van Co., 938 F.d2 731 (7<sup>th</sup> Cir. 1991). See also In re Borbridge, 81 B.R. 332 (E.D. Pa. 1988) (noting that "[t]he easiest ground for determining that 'cause exists in favor of an unsecured creditor is when the creditor seeks to recover from nonestate property, such as an insurance or indemnity agreement.'")